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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,766

05/05/2005

Bendik Bo

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4795

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DENNISON, SCHULTZ & MACDONALD
1727 KING STREET
SUITE 105
ALEXANDRIA, VA 22314

EXAMINER

MATTER, KRISTEN CLARETTE

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

07/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/529,766

Applicant(s)

BO, BENDIK

Examiner

Kristen C. Matter

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 May 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Action is in response to the amendment filed on 5/8/2007. Currently, claims 19-36 are pending in the application.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 50.

In addition, no connection means are shown between the bellow cylinders and motors. These connections should be shown to better describe the operation of the device.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 27-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 27 is dependent on a cancelled claim; therefore, the metes and bounds of the claim are not clearly defined because the structure upon which claim 27 further limits is unknown.

Claims 28-36 are dependent on claim 27 and are therefore rejected for the same reasons as outlined above with respect to claim 27.

Accordingly, claims 27-26 have not been further treated on the merits.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention does not fall within at least one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter) because the base claimed in claim 19 is defined as ground "like the floor of an ordinary stabling (stable room) for a horse" on page 5, lines 6-7, of the Applicant's disclosure. The base is positively claimed by the Applicant, and has been defined as ground, which is non-statutory subject matter not patentable under 35 USC 101.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-21, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ricken (US 4,782,822).

Regarding claims 19-21, Ricken discloses a device for treatment of animal muscles, joints, or tendons, comprising a functionally single layer plate (12) having an upper surface for receiving an animal or person and a lower surface, a plurality of flexible spacers (22) for spacing the plate a predetermined distance above a base (14), and a motor (16) that has an intensity that is either stepless or discretely variable mounted to the top surface of the plate for setting the plate in vibration. However, Ricken discloses that the spacers are mounted to the base, not the plate. It would have been an obvious design consideration to one of ordinary skill in the art at the time the invention was made to have mounted the spacers to the plate as opposed to the base for spacing the plate from the base.

Regarding claim 25, Ricken discloses that the shape and size of the device corresponds to a stable and constitutes a floor (see Figure 1).

Regarding claim 26, Ricken is silent as to the driving source output range. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have operated Ricken's drive source within a range of 0.1-2 kW for stimulating the muscles of the animal or person because this range is well known in the art and it appears that the device

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disclosed by Ricken would perform equally well when operated within the selected range.

Furthermore, Applicant admits in the disclosure that this is a “normal” range for a motor in these devices and therefore well known in the art.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ricken as applied to claims 19-21, 25, and 26 above and further in view of Cutler (US 5, 437,608). Ricken is silent as to the device having a timer. However, Cutler discloses a vibrating plate for a person comprising a timer (44) to automatically turn the drive source off after a preselected amount of time. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide a timer to Ricken’s device as taught by Cutler so as to save energy. Cutler does not disclose that the timer automatically starts the drive source, but rather the device is restarted by pressing the on/off switch again. However, because the modified Ricken device has a timer and a controller (20), it would be capable of starting/stopping the power with an appropriate program. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have programmed the modified device of Ricken to start/stop automatically for providing a specific amount of treatment to a user.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ricken as applied to claims 19-21, 25, and 26 above and further in view of Komatsu (US 5,442,710). Although Ricken discloses Aluminum for its lightweight properties (column 2, lines 45-50), Ricken is silent as to the plate comprising a core of fibreboard or synthetic material or a coating of flexible material. Komatsu discloses a vibration plate for a person that comprises a plate made

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of plastic and foam, soft, synthetic materials (column 4, lines 15-25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the plate disclosed by Ricken with a lightweight synthetic material having a soft cloth covering as taught by Komatsu in order to provide added comfort to the user or for cleaning purposes. See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960), in which the selection of a known material based on its suitability for its intended use supported a prima facie case of obviousness.

Response to Arguments

Applicant's arguments with respect to claims 19-36 have been considered but are moot in view of the new ground(s) of rejection.

In response to Applicant's arguments that the invention is clearly directed to statutory subject matter, Examiner argues that because the base is positively claimed and is defined solely as the ground or floor of a stable, which is not part of the Applicant's invention, the invention is directed towards non-statutory subject matter.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Matter whose telephone number is (571) 272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Kristen C. Matter
Examiner
Art Unit 3771


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7/6/07